

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

ROBERT BOYKIN and ELIZABETH BOYKIN,

Plaintiffs

08 CV - 2486

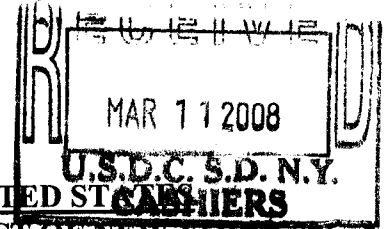
**NOTICE OF
REMOVAL**

-against-

SHAUN OTTEN & INSINGER PERFORMANCE
INCORPORATED,

Defendants.
_____X

**TO THE HONORABLE JUDGES OF THE UNITED STATES
DISTRICT COURT FOR THE SOUTHERN DISTRICT OF NEW YORK**



The Petitioners, SHAUN OTTEN & INSINGER PERFORMANCE INCORPORATED, defendants in the above entitled action, by their attorneys, WHITE, FLEISCHNER & FINO, LLP, respectfully show this Court:

1. The petitioners are named defendants in the instant action.
2. This action was commenced by the filing of a Summons and Verified Complaint in the Supreme Court of the State of New York, County of Orange, on or about January 18, 2008. Annexed hereto as **Exhibit "A"** is a copy of this pleading.
3. Petitioners served an Answer to Plaintiffs' Complaint on February 13, 2008. Along with their Answer, petitioners also served Plaintiff with a Demand for Relief. Annexed hereto as **Exhibit "B"** are copies of Petitioner's Answer and the Demand for Relief.
4. On or about February 28, 2008, Plaintiff provided, within their Bill of Particulars, a demand for relief totaling \$3 million. A copy Plaintiff's Bill of Particulars, as well as the accompanying affidavit of service, are attached here as **Exhibit "C"**.

5. Plaintiffs in the above captioned matter claim to have sustained personal injuries and other damages on May 29, 2007, when plaintiff Robert Boykin was involved in a motor vehicle accident with petitioner SHAUN OTTEN.

6. This Court has original jurisdiction of this civil action pursuant to 28 USC §1332 because there is complete diversity in the matter and the amount in controversy exceeds the sum of \$75,000 exclusive of interest and costs.

7. Petitioner INSINGER PERFORMANCE INCORPORATED is a Pennsylvania corporation, with its principle place of business in Dushore, Pennsylvania.

8. Petitioner SHAUN OTTEN is a resident of Tunkhannock, Pennsylvania.

9. Plaintiff is a resident of Middletown, New York.

WHEREFORE, petitioners pray that the instant action now pending before the Supreme Court of the State of New York, County of New York, be removed therefrom to the United States District Court for the Southern District of New York and for such other and further relief as this Court deems just and proper.

Dated: New York, New York
March 11, 2008

Yours, etc.,

WHITE FLEISCHNER & FINO, LLP

By: 

DANIEL M. STEWART (DS 7989)

Attorneys for Petitioners

61 Broadway - 18th Floor

New York, New York 10006

(212) 487-9700

Our File No.: 117-13283-D-PAF/DMS

TO: (See Attached Affidavit)

EXHIBIT A

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF ORANGE

-----X
ROBERT BOYKIN & ELIZABETH BOYKIN,

Plaintiffs,

Index #: 00002/08

-against-

NOTICE OF SERVICE
OF SUMMONS

SHAUN OTTEN & INSINGER PERFORMANCE
INCORPORATED,

Defendants.
-----X

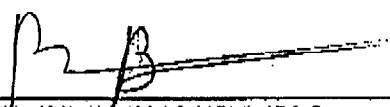
S I R:

PLEASE TAKE NOTICE, that pursuant to the provisions of Section 253 of the Vehicle and Traffic Law of the State of New York, a copy of the Summons in the above entitled action was served upon you by mailing on January 18, 2008 a copy of such Summons to the Secretary of State of the State of New York addressed to his office in the City of Albany, New York with a fee of Ten (\$10.00) Dollars;

AND TAKE FURTHER NOTICE that we are sending you herewith by certified mail a copy of the Summons and Complaint in this action.

Dated: Goshen, New York
January 18, 2008

Yours, etc.



RICHARD BERNSELY, ESQ.

Attorney for Plaintiffs
One Railroad Avenue
Goshen, NY 10924
Phone: 845-294-4788

TO: Insinger Performance Incorporated
Defendant
RR2 Box 1282 B
Dushore, PA 18614

SUPREME COURT OF THE STATE OF NEW YORK:
COUNTY OF ORANGE:

ROBERT BOYKIN & ELIZABETH BOYKIN,

Plaintiffs,

-against-

SHAUN OTTEN & INSINGER PERFORMANCE
INCORPORATED,

Defendants.

To the above named defendants,

You are hereby summoned to answer the complaint in this action and to serve a copy of your answer, or if the complaint is not served with a summons, to serve a notice of appearance, with the Plaintiffs' attorney within 20 days after the service of this summons, exclusive of the day of service (or within 30 days after the service is complete if this summons is not personally delivered to you within the State of New York); and in case of your failure to appear or answer, judgment will be taken against you by default for the relief demanded in the Complaint.

Dated: Goshen, New York
November 26, 2007

Defendants' Addresses:

SHAUN OTTEN

Defendant-in-Person

4 Stonecrest Apts.

Tunkhannock, Pa 18657

INSINGER PERFORMANCE INCORPORATED,

Defendant

RR2 Box 1282 B

Dushore, Pa 18614

Index #

Date Purchased: 1/2/08

Plaintiffs designate

Orange County

as the place of trial

The basis of the venue

is Plaintiffs' residence.

SUMMONS

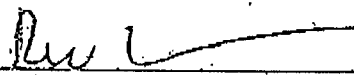
Plaintiffs reside at

45 Underhill Rd. Apt. 2

Middletown, NY 10940

FILED
ORANGE COUNTY CLERK
JAN - 2 A 9:06

ORIGINAL FILED


Richard Bernsley, Esq.
Attorney for Plaintiffs
One Railroad Avenue
Goshen, New York 10924
(845) 294-4788

SUPREME COURT OF THE STATE OF NEW YORK:
COUNTY OF ORANGE:

ROBERT BOYKIN & ELIZABETH BOYKIN,

Plaintiffs,

-against-

SHAUN OTTEN & INSINGER PERFORMANCE
INCORPORATED,

Defendants.

VERIFIED COMPLAINT

INDEX#:

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Plaintiffs, by their attorney, Richard Bernsley, Esq., as and for their Verified Complaint herein allege the following:

AS AND FOR A FIRST CAUSE OF ACTION ON BEHALF OF
PLAINTIFF, ROBERT BOYKIN:

1. At all times hereinafter relevant, plaintiffs, ROBERT BOYKIN and
ELIZABETH BOYKIN, were and still are residents of City of Middletown, County of
Orange and State of New York.

2. At all times hereinafter relevant, upon information and belief, defendant,
SHAUN OTTEN, was and still is a resident of County of Wyoming and Commonwealth
of Pennsylvania.

3. At all times hereinafter relevant, upon information and belief, defendant,
INSINGER PERFORMANCE INCORPORATED, was and still is a foreign corporation
duly organized and existing under and by virtue of the laws of a Sister State.

4. At all times hereinafter relevant, upon information and belief, defendant,
INSINGER PERFORMANCE INCORPORATED, was and still is a foreign corporation
duly organized and existing under and by virtue of the laws of Pennsylvania.

5. At all times hereinafter relevant, plaintiff, ROBERT BOYKIN was the operator of a 1997 Chevrolet motor vehicle bearing license plate number BVS6815 for the State of New York.

6. At all times hereinafter relevant, defendant, SHAUN OTTEN, was the operator of a 1994 Case motor vehicle bearing license plate number AE82072 for the Commonwealth of Pennsylvania.

7. At all times hereinafter relevant, defendant, INSINGER PERFORMANCE INCORPORATED, was the owner of a 1994 Case motor vehicle bearing license plate number AE82072 for the Commonwealth of Pennsylvania.

8. At all times hereinafter relevant, defendant, INSINGER PERFORMANCE INCORPORATED, was the lessee of a 1994 Case motor vehicle bearing license plate number AE82072 for the Commonwealth of Pennsylvania.

9. At all times hereinafter relevant, defendant, INSINGER PERFORMANCE INCORPORATED, reserved unto itself the maintenance and control of a 1994 Case motor vehicle bearing license plate number AE82072 for the Commonwealth of Pennsylvania.

10. At all times hereinafter relevant, defendant, SHAUN OTTEN, operated the 1994 Case motor vehicle bearing license plate number AE82072 for the Commonwealth of Pennsylvania with the permission, expressed and/or implied, of the defendant, INSINGER PERFORMANCE INCORPORATED.

11. At all times hereinafter relevant, defendant, SHAUN OTTEN, was employed by, and was the agent and servant of INSINGER PERFORMANCE INCORPORATED.

12. At all times hereinafter relevant, defendant, SHAUN OTTEN, acted within the scope of his employment and for and on behalf of his employer, defendant, INSINGER PERFORMANCE INCORPORATED.

13. At all times hereinafter relevant, Interstate 84, Town of Wawayanda, County of Orange and State of New York, was and still is a public highway and thoroughfare.

14. At all times hereinafter relevant, Interstate 84, Town of Wawayanda, County of Orange and State of New York, was the situs of the accident herein.

15. On or about the 29th day of May, 2007, the aforementioned vehicles were in contact with each other.

16. The accident and injuries, which resulted therefrom, were caused by the negligence, wanton, reckless and careless acts of the defendants, jointly and severally, and without any fault or negligence contributing thereto on the plaintiff's part.

17. The defendants, jointly and severally, were negligent, wanton, reckless, extremely disregardful and careless in causing and/or permitting their motor vehicle to come in contact with plaintiff's motor vehicle; in failing to take those steps necessary to avoid the incident which occurred herein; in failing to operate their motor vehicle in a manner and at a speed which was reasonable and proper under the traffic conditions then prevailing; in failing to keep their motor vehicle under proper control; in failing to properly operate the steering and braking systems of their motor vehicle in order to prevent the incident which occurred herein; in failing to keep a proper lookout; in failing to stop and/or slow down; in failing to obey the rules of the road; in failing to obey the traffic devices of the road; in failing to maintain adequate space between their motor vehicle and those around them; in failing to proceed in the proper lane of travel; in crossing into plaintiff's lane of travel; in failing to exercise the caution, care and prudence which was reasonable and proper under all the circumstances then existing; in failing to yield the right of way; in acting without regard for the safety of others; and in being in other ways negligent, wanton, reckless, extremely disregardful and careless.

18. That by reason of the foregoing, this plaintiff, ROBERT BOYKIN, has sustained a serious injury as defined in subsection (d) of section 5102 of the Insurance

Law of the State of New York and was caused to sustain severe and serious personal injuries to his mind and body, some of which, upon information and belief, are prolonged effects of pain, disability, disfigurement, loss of bodily functions. In addition, this plaintiff has incurred economic loss greater than basic economic loss as defined in subdivision (a) of section 5102 of the Insurance Law of the State of New York.

19. The limited liability provisions of CPLR 1601 do not apply to this action pursuant to one or more of the exceptions at CPLR 1602.

20. That by reason of the foregoing, this plaintiff, ROBERT BOYKIN, was damaged and the amount of damages sought in this action exceeds the jurisdictional limits of all lower courts which would otherwise have jurisdiction.

**AS AND FOR A SECOND CAUSE OF ACTION ON BEHALF OF
PLAINTIFF, ELIZABETH BOYKIN:**

21. The plaintiff, ELIZABETH BOYKIN, repeats, reiterates and realleges each and every allegation contained in paragraphs numbered "1" through 19" of the First Cause of Action, with the same force and effect as if more fully set forth herein at length.

22. The plaintiff, ELIZABETH BOYKIN, is the lawfully wedded wife of the plaintiff, ROBERT BOYKIN.


23. By reason of this accident, the plaintiff, ELIZABETH BOYKIN, has been deprived of the comfort, services, companionship and society of her husband and has incurred and will continue to incur great expense incident to his medical care and treatment.

24. That by reason of the foregoing, this plaintiff was damaged and the amount of damages sought in this action exceeds the jurisdictional limits of all lower courts which would otherwise have jurisdiction.

WHEREFORE, the plaintiffs demand judgment against the defendants, jointly and severally, in an amount to be determined upon the trial of this action, together with such interest, costs and disbursements as are appropriate to the action.

Dated: Goshen, New York
November 26, 2007

Yours, etc.


Richard Bernsley, Esq.
Attorney for Plaintiffs
One Railroad Avenue
Goshen, New York 10924
(845) 294-4788

TO:

SHAUN OTTEN
Defendant-in-Person
4 Stonecrest Apts.
Tunkhannock, Pa 18657

INSINGER PERFORMANCE INCORPORATED,
Defendant
RR2 Box 1282 B
Dushore, Pa 18614

STATE OF NEW YORK)
) ss
COUNTY OF ORANGE)

ROBERT BOYKIN, the undersigned, being duly sworn, deposes and says: I am the Plaintiff in the action herein; I have read the annexed Summons and Complaint and know the contents thereof; the same is true to my own knowledge, except those matters therein which are stated to be alleged on information and belief, and as to those matters I believe them to be true.

Robert Boykin
ROBERT BOYKIN

Sworn to before me this
28 day of November, 2007

NOTARY PUBLIC

LOUISA M. INGRASSIA
Notary Public, State of New York
No. 01IN6074711
Qualified in Orange County
Commission Expires May 20, 2010

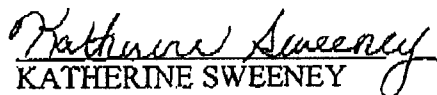
STATE OF NEW YORK)
)ss.:
COUNTY OF ORANGE)

I, KATHERINE SWEENEY, the undersigned, being sworn, say:

I am not a party to the action, am over 18 years of age and reside at Washingtonville, New York.

On January 18, 2008 I served the within Notice of Service of Summons by depositing a true copy thereof enclosed in a post paid envelope via first class mail in an official depository under the exclusive care and custody of the U.S. Postal Service, addressed to each of the following persons at the last known address set forth after each name:

Insinger Performance Incorporated
RR2 Box 1282 B
Dushore, PA 18614


KATHERINE SWEENEY

Sworn to before me this
18th day of January, 2008


NOTARY PUBLIC

THERESA COLEMAN
Notary Public, State of New York
No. 01CO6044368
Qualified in Orange County
Commission Expires July 3, 2010

Index No. 2

Year 2008

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF ORANGE

ROBERT BOYKIN & ELIZABETH BOYKIN,

Plaintiffs,

against

SHAUN KOTTEN & SINSINGER PERFORMANCE
INCORPORATED,

Defendants.

SUMMONS & VERIFIED COMPLAINT

LAW OFFICES OF
RICHARD ALAN BERNSTEY

Attorney for

Plaintiffs

ONE RAILROAD AVENUE

GOSHEN, NEW YORK 10924

TEL: (845) 294-4788 FAX: (845) 294-1751

Pursuant to 22 NYCRR 130.2 (1) the undersigned, an attorney admitted to practice in the State of New York, (1) certifies that, upon information and belief and reasonable inquiry, the contentions contained in the within document are not frivolous and that (2) if the annexed documents containing pleadings in the matter were obtained through illegal conduct or that if it was, the attorney or other persons responsible for the illegal conduct are not participating in the matter or sharing in any fee earned therefrom and that (3) if the matter involves potential claims for personal injury or wrongful death, the matter was not obtained in violation of 22 NYCRR 130.0 (4)(b).

Dated: November 26, 2007

Signature

Richard Bernsley

Richard Bernsley

Print Signer's Name

Service of a copy of the within

document

Dated

Attorney(s) for

PLEASE TAKE NOTICE



that the within is a (certified) true copy of a

NOTICE OF ENTRY entered in the office of the clerk of the within named Court on

20



that an Order of which the within is a true copy will be presented for settlement to the

NOTICE OF SETTLEMENT Hon.

one of the judges of the within named Court

on

20

at

M

Dated

LAW OFFICES OF
RICHARD ALAN BERNSTEY

Attorney for

To:

ONE RAILROAD AVENUE

EXHIBIT B

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF ORANGE

ROBERT BOYKIN and ELIZABETH BOYKIN,

Plaintiff,

Index No.: 00002/08

-against-

VERIFIED ANSWER

SHAUN OTTEN & INSINGER PERFORMANCE
INCORPORATED,

Defendants.

Defendants, SHAUN OTTEN & INSINGER PERFORMANCE INCORPORATED,
by their attorneys, WHITE FLEISCHNER & FINO, LLP, as and for their answer to the
plaintiffs' verified complaint, respectfully alleges:

**AS AND FOR DEFENDANTS' ANSWER TO
PLAINTIFFS' FIRST CAUSE OF ACTION**

1. Denies knowledge and information sufficient to form a belief as to those allegations set forth in paragraphs numbered "1", "3", "5", "9", "13", "14", and "15".
2. Upon information and belief denies those allegations set forth in paragraphs numbered "8".
3. Denies each and every allegation set forth in paragraphs numbered "2" except admits that SHAUN OTTEN is a Pennsylvania resident.
4. Denies each and every allegation set forth in paragraphs numbered "11" and "12" except admits that SHAUN OTTEN was employed by INSINGER on the date of the alleged accident, and was in the course and scope of his employment at the time of the alleged accident.
5. Denies each and every allegation set forth in paragraphs numbered "16", "17", "18", "19", and "20" and leaves all matters of law to the honorable court.

**AS AND FOR DEFENDANTS' ANSWER TO
PLAINTIFFS' SECOND CAUSE OF ACTION**

6. Defendants, SHAUN OTTEN & INSINGER PERFORMANCE INCORPORATED, repeat(s) and reiterate(s) each and every denial heretofore made in this answer to the paragraphs of the complaint designated "1" through "20" inclusive, with the same force and effect as if set forth here more particularly at length, all in response to the paragraph of the complaint designated "21".

7. Denies each and every allegation set forth in paragraphs numbered "23".

8. Denies knowledge and information sufficient to form a belief as to those allegations set forth in paragraphs numbered "22".

9. Denies each and every allegation set forth in paragraphs numbered "24" and leaves all matters of law to the honorable court.

AS AND FOR A FIRST CAUSE OF ACTION

10. Pursuant to CPLR Article 16, the liability of defendants, SHAUN OTTEN & INSINGER PERFORMANCE INCORPORATED, to the plaintiffs herein for non-economic loss is limited to defendants, SHAUN OTTEN & INSINGER PERFORMANCE INCORPORATED, equitable share determined in accordance with the relative culpability of each person causing or contributing to the total liability for non-economic loss.

AS AND FOR A SECOND AFFIRMATIVE DEFENSE

11. That by entering into the activity in which the plaintiffs were engaged at the time of the occurrence set forth in the complaint, said plaintiffs knew the hazards thereof and the inherent risks incident thereto and had full knowledge of the dangers thereof; that whatever injuries and damages were sustained by the plaintiffs herein as alleged in the complaint arose from and were caused by reason of such risks voluntarily undertaken by the plaintiffs in their

activities and such risks were assumed and accepted by him in performing and engaging in said activities.

AS AND FOR A THIRD AFFIRMATIVE DEFENSE

12. Plaintiffs have recovered the costs of medical care, dental care, custodial care, rehabilitation services, loss of earnings and other economical loss and any future such loss or expense will, with reasonable certainty, be replaced or indemnified in whole or in part from collateral sources. Any award made to plaintiffs shall be reduced in accordance with the provisions of CPLR 4545(c).

AS AND FOR A FOURTH AFFIRMATIVE DEFENSE

13. Any damages sustained by the plaintiffs were caused by the culpable conduct of the plaintiffs, including contributory negligence, assumption of risks, breach of contract and not by the culpable conduct or negligence of this answering defendant. But if a verdict of judgment is awarded to the plaintiffs, then and in that event the damages shall be reduced in the proportion which the culpable conduct attributable to the plaintiffs bears to the culpable conduct which caused the damages.

AS AND FOR A FIFTH AFFIRMATIVE DEFENSE

14. The risks and dangers, if any, were open, obvious, notorious, and apparent.

AS AND FOR A SIXTH AFFIRMATIVE DEFENSE

15. This case shall be dismissed under the doctrine of Forum Non Conveniens.

AS AND FOR A SEVENTH AFFIRMATIVE DEFENSE

16. Whatever injuries and/or damages sustained by the plaintiff at the time and place alleged in the complaint, were due to the acts of parties over whom the defendant was not obligated to exercise any control or supervision.

AS AND FOR AN EIGHTH AFFIRMATIVE DEFENSE

17. That the Court herein does not have jurisdiction over the person of the defendants, SHAUN OTTEN & INSINGER PERFORMANCE INCORPORATED, in that they were not properly served with the summons and complaint in the above action.

AS AND FOR A NINTH AFFIRMATIVE DEFENSE

18. Plaintiff failed to mitigate damages.

AS AND FOR A TENTH AFFIRMATIVE DEFENSE

19. That plaintiffs do not have a "serious injury" as defined in §5102 and §5104 et seq. of the New York Insurance Law and is therefore barred from maintaining this action.

AS AND FOR AN ELEVENTH AFFIRMATIVE DEFENSE

20. That the defendants, SHAUN OTTEN & INSINGER PERFORMANCE INCORPORATED, exercised reasonable care in the ownership, maintenance and operation of the vehicle in question.

AS AND FOR A TWELFTH AFFIRMATIVE DEFENSE

21. The vehicle in question conformed with all applicable rules, regulations, laws, statutes, codes, standards and requirements formulated and/or in effect at the time of the alleged accident.

AS AND FOR A THIRTEENTH AFFIRMATIVE DEFENSE

22. That the plaintiffs failed to use safety devices available to the plaintiffs at the time of the events alleged in the plaintiffs' complaint and the plaintiffs' failure to use such devices was negligent and was a cause in whole or in part of the injuries sustained by plaintiffs.

AS AND FOR A FOURTEENTH AFFIRMATIVE DEFENSE

23. That plaintiff(s) injuries were caused in whole or in part by the failure of the operator of the host vehicle to properly restrain the plaintiff in said motor vehicle with a safety seat or belt, pursuant to Vehicle and Traffic Law §1229(c).

AS AND FOR A FIFTEENTH AFFIRMATIVE DEFENSE

24. That the plaintiff could with due diligence have obtained personal jurisdiction over tortfeasors not made parties to this lawsuit and thus the culpability of such missing or absent tortfeasors is to be apportioned into the total culpability allegedly causing the subject occurrence.

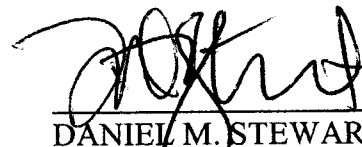
WHEREFORE, defendants, SHAUN OTTEN & INSINGER PERFORMANCE INCORPORATED, demands judgment dismissing the complaint herein together with the costs and disbursements of this action.

Dated: New York, New York
February 13, 2008

Yours, etc.,

WHITE FLEISCHNER & FINO, LLP

By:



DANIEL M. STEWART

Attorneys for Defendants
61 Broadway - 18th Floor
New York, New York 10006
(212) 487-9700
Our File No.: 117-13283-D-PAF/DMS

TO: (See Attached Affidavit)

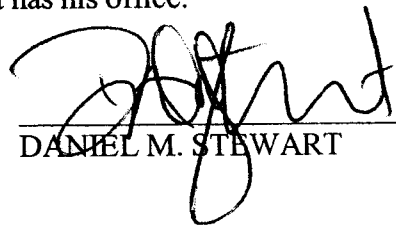
STATE OF NEW YORK)
COUNTY OF NEW YORK) ss:

DANIEL M. STEWART, being duly sworn, deposes and says:

That he is the attorney for the defendants in the within action; that he has read the within Answer and knows the contents thereof, and that same is true to his own knowledge, except and to the matters herein stated to be alleged upon information and belief, and that as to those matters he believes it to be true.

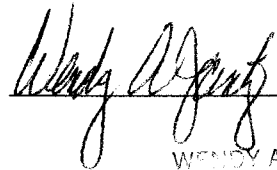
That the sources of his information and knowledge are investigation and records on file.

That the reason this verification is being made by deponent and not by defendants is that the defendants are not within the county where deponent has his office.



DANIEL M. STEWART

Sworn to before me this
13th day of February, 2008



WENDY A. JANTZ
Notary Public, State of New York
No. 913A-0049112
Qualified in Richmond County
Commission Expires January 23, 2011

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF ORANGE

ROBERT BOYKIN and ELIZABETH BOYKIN,

Plaintiff,

-against-

SHAUN OTTEN & INSINGER PERFORMANCE
INCORPORATED,

Defendants.

VERIFIED ANSWER

WHITE FLEISCHNER & FINO, LLP

*Attorneys for DEFENDANTS, SHAUN OTTEN & INSINGER PERFORMANCE
INCORPORATED*

**61 BROADWAY
NEW YORK, N.Y. 10006
(212) 487-9700**

To:
Attorney(s) for

Service of a copy of the within
Dated:

is hereby admitted.

.....
Attorney(s) for

PLEASE TAKE NOTICE

☐

that the within is a (certified) true copy of a
entered in the office of the clerk of the within named Court on

NOTICE OF
ENTRY

☐

that an Order of which the within is a true copy will be presented for settlement to the Hon.
one of the judges of the within named Court, at , on , at .

NOTICE OF
SETTLEMENT

Dated:

WHITE FLEISCHNER & FINO, LLP

Attorneys for

**61 BROADWAY
NEW YORK, N.Y. 10006**

COUNTY OF ORANGE

ROBERT BOYKIN and ELIZABETH BOYKIN,

Plaintiff,

Index No.: 00002/08

-against-

**DEMAND FOR
RELIEF**

SHAUN OTTEN & INSINGER PERFORMANCE
INCORPORATED,

Defendants.
_____X

S I R S :

PLEASE TAKE NOTICE that, pursuant to CPLR 3017(c) the defendants herein, SHAUN OTTEN & INSINGER PERFORMANCE INCORPORATED, hereby requests that, within twenty (20) days hereof, the plaintiffs ROBERT BOYKIN and ELIZABETH BOYKIN, serve a supplemental demand for relief setting forth the total damages to which he deems himself entitled.

Dated: New York, New York
February 13, 2008

Yours, etc.,

WHITE FLEISCHNER & FINO, LLP

By:



DANIEL M. STEWART

Attorneys for Defendants

61 Broadway - 18th Floor

New York, New York 10006

(212) 487-9700

Our File No.: 117-13283-D-PAF/DMS

TO: (See Attached Affidavit)

EXHIBIT C

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF ORANGE

ROBERT BOYKIN & ELIZABETH BOYKIN,

Plaintiffs,

**VERIFIED BILL OF
PARTICULARS**

-against-

Index #: 2/08

SHAUN OTTEN & INSINGER PERFORMANCE
INCORPORATED,

Defendants.

Plaintiffs, by their attorney, Richard A. Bernsley, Esq., as and for their Verified Bill of Particulars, herein state as follows:

1. Plaintiffs reside at 45 Underhill Road, Apt. K, Middletown, New York. Robert Boykin's date of birth is 12/24/1969 and his social security number is 555-61-9974.
2. The accident occurred on May 29, 2007, at approximately 4:00 p.m. The weather conditions were clear.
3. The accident occurred on Interstate 84, Town of Wawayanda, County of Orange and State of New York when defendants' vehicle turned into plaintiff's vehicle.
4. Plaintiff's vehicle was traveling eastbound in the right lane of Interstate 84. Defendants' vehicle was traveling eastbound in the left lane of Interstate 84 when it turned into plaintiff's lane of travel.
5. Not applicable.
6. The defendants were negligent, wanton, reckless, extremely disregardful and careless: in causing and/or permitting their motor vehicle to come in contact with plaintiff's motor vehicle; in failing to take those steps necessary to avoid the incident which occurred herein; in failing to operate their vehicle in a manner and at a speed which was reasonable and proper under the traffic conditions then prevailing; in failing to keep their motor vehicle under proper control; in failing to properly operate the steering and braking systems of their motor vehicle in order to prevent the incident which occurred herein; in failing to keep a proper lookout; in failing to stop and/or slow down; in failing to obey the rules of the road; in failing to obey the traffic devices of the road; in failing to maintain adequate space between their motor vehicle and those around them; in failing to exercise the caution, care and prudence which was reasonable and proper under all the circumstances then existing; in following a vehicle too closely; in failing to be attentive; and in failing to see that what was in plain sight; in crossing into plaintiff's lane of travel; in making an unsafe turn; in failing to proceed in the proper lane of travel; in failing to observe the roadway; and in failing to yield the right of way.

7. On the accident date, the defendants violated New York State Vehicle and Traffic Law sections: 1110(a);1120;1122;1123;1126;1127(a);1128(a);1129(a);1180(a); and 1212.
8. The plaintiff, Robert Boykin, sustained the following injuries:
 - Left shoulder tear of the supraspinatus tendon
 - Left shoulder tear of the posterior lip of the glenoid labrum
 - Left shoulder rotator cuff tear
 - Left shoulder impingement
 - Left shoulder instability
 - Left shoulder intra-articular synovitis
 - Left shoulder undersurface fraying of the rotator cuff tendon
 - Left shoulder fraying of the anterior and posterior glenoid labra
 - Left shoulder internal derangement
 - Left knee tear of the posterior horn of the medial meniscus
 - Left knee internal derangement
 - Left ankle inversion sprain
 - Cervical sprain/strain

All of the above injuries and their sequela are permanent except for those of a superficial nature.

The plaintiff, Robert Boykin, has sustained a serious injury. The plaintiff has sustained a permanent consequential limitation of use and significant limitation of use pertaining to his left shoulder and left knee. The plaintiff has sustained a significant disfigurement to his left shoulder. The plaintiff has sustained a medically determined injury or impairment of a non-permanent nature which has prevented him from performing substantially all of the material tasks which constituted his usual and customary daily activities for not less than ninety days during the one hundred and eighty days immediately following this accident. The plaintiff has also sustained economic damages exceeding basic economic loss due to continuing medical expenses.

All of the foregoing injuries resulted in damage, stretching, tearing and injury to surrounding muscles, tendons, ligaments, cartilages, nerves, nervous system, tissues, blood supply and soft parts.

All of the above injuries were accompanied by, and productive of, severe pain, tenderness, weakness, stiffness, discomfort, swelling, soreness, limitation and restriction of motion and movement, rotation, flexion, and extension of limbs, inflammation, rigidity, numbness, instability deformity, and disability with involvement of the ligaments, muscles, nerves, tendons, soft tissues, cartilages, and blood vessels and as a result of which necessitated medication and extensive treatment. All of the above injuries and their sequela are permanent except for those of a superficial nature.

9. The plaintiff, Robert Boykin, was treated at the emergency room of Orange Regional Medical Center, Middletown, New York on May 29, 2007. The plaintiff was also treated at the emergency room of Orange Regional Medical Center, Goshen, New York on June 1, 2007. The plaintiff also underwent the following procedure, performed by Dr. Steven Touliopoulos at St. Vincent's Hospital on December 6, 2007: Left shoulder arthroscopic anterior capsular placcation, arthroscopic subacromial decompression, arthroscopic partial

synovectomy, arthroscopic debridement of partial undersurface rotator cuff fraying, and arthroscopic debridement of anterior and posterior labral fraying. Plaintiff remains periodically confined to home from December 6, 2007 to present.

10. Annexed to Plaintiff's response to notice for discovery and inspection are authorizations to retrieve plaintiff's medical records which will include all x-ray reports.
11. The plaintiff's medical providers and known estimated special damages are:

Orange Regional Medical Center	\$781.00
Horton Campus	
60 Prospect Avenue	
Middletown, New York 10940	

Orange Regional Medical Center	\$386.71
Arden Hill Campus	
4 Harriman Drive	
Goshen, New York 10924	

Vincent J. Gulfo, M.D.	\$550.00
70 Hatfield Lane	
Goshen, New York 10924	

Health Point Physical Therapy	\$1295.01
10 Little Britain Road	
Newburgh, New York 12550	

Lenox Hill Radiology & Medical Imaging Associates	\$1757.34
Jacob Lichy, M.D./ Thomas Kolb, M.D.	
61 East 77 th Street	
New York, New York 10021	

University Orthopedics of New York/	\$
Steven Touliopoulos, M.D.	
36 7 th Avenue, Suite 502	
New York, New York 10011	

St. Vincents Hospital	\$
170 W. 12 th Street	
New York, New York 10011	

Mobile Life Support Services	\$508.78
Post Office Box 471	
Newburgh, New York 12551	

All special damages are continuing. Annexed to Plaintiff's response to notice for discovery and inspection are authorizations to retrieve plaintiff's medical records which should indicate all dates of treatments.

12. See response # 11.
13. Not applicable.
14. The plaintiff is employed as a porter for Travel Centers of America, 125 Neelytown Road, Montgomery, New York. His salary is \$8.24/hour and works 40 hours per week. Plaintiff was unable to work from May 30, 2007 through June 4, 2007, and November 30, 2007 to present and therefore his estimated lost earnings are \$4120.00 and continuing.
15. Not applicable.
16. Not applicable.
17. See response # 11.
18. Not applicable.
19. Not applicable.
20. Not applicable.
21. See response # 11.
22. Plaintiff's medical expenses are paid under his no-fault insurance policy. The no-fault carrier is Encompass Insurance Company, Post Office Box 440457, Kennesaw, Georgia, policy # 261054770; claim # Z6030308. Annexed to Plaintiff's response to notice for discovery and inspection is an authorization to retrieve plaintiff's no-fault file.
23. See response # 22.
24. See response # 22.
25. Plaintiff's 1997 Chevrolet motor vehicle was rendered a total loss and payment for property damage was made.
26. See response # 25.
27. At the time of the occurrence plaintiff was, and remains, married to ELIZABETH BOYKIN.
28. Plaintiff, ELIZABETH BOYKIN, resides at 45 Underhill Road, Apt. K, Middletown, New York.
29. By reason of this accident, the plaintiff, ELIZABETH BOYKIN, has been deprived, from the accident date to present, of the comfort, services, companionship and society of her husband and has incurred and will continue to incur great expense incident to his medical care and treatment.
30. Pursuant to defendants' CPLR 3017(c) demand, plaintiff, Robert Boykin, claims damages in the amount of Two Million Dollars and plaintiff, Elizabeth Boykin, claims damages in the amount of One Million Dollars.

Dated: Goshen, New York
February 28, 2008

Yours etc.,

Richard A. Bernsley, Esq.
Attorney for Plaintiffs
One Railroad Avenue
Goshen, New York 10924
(845) 294-4788

TO: White Fleischner & Fino, LLP
Attorneys for Defendants
61 Broadway
New York, New York 10006
212-487-9700

STATE OF NEW YORK)
) SS.:
COUNTY OF ORANGE)

MELISSA HERNANDEZ, being duly sworn, deposes and says:

I am not a party to this action, I am over 18 years of age and reside at Port Jervis, New York.

On February 28, 2008 I served the within Verified Bill of Particulars, Response to Notice for Discovery and Inspection and Combined Demands to Defendant by depositing a true copy thereof enclosed in a post paid envelope via first class mail in an official depository under the exclusive care and custody of the U.S. Postal Service, addressed to each of the following persons at the last known address set forth after each name:

White, Fleischner & Fino, LLP
61 Broadway
New York, New York 10006


MELISSA HERNANDEZ

Sworn to before me this
28th day of February, 2008


NOTARY PUBLIC

THERESA COLEMAN
Notary Public, State of New York
No. 01CO5044368
Qualified in Orange County 10
Commission Expires July 3, 20__

I, the undersigned, am an attorney admitted to practice in the courts of New York, and

Check Applicable Box
☐ Attorney's Certification
☐ Attorney's Verification by Affirmation

certify that the annexed

has been compared by me with the original and found to be a true and complete copy thereof.

say that: I am the attorney of record, or of counsel with the attorney(s) of record, for

. I have read the annexed

know the contents thereof and the same are true to my knowledge, except those matters therein which are stated to be alleged on information and belief, and as to those matters I believe them to be true. My belief, as to those matters therein not stated upon knowledge, is based upon the following.

The reason I make this affirmation instead of

is

I affirm that the foregoing statements are true under penalties of perjury.

Dated:

(Print signer's name below signature)

STATE OF NEW YORK, COUNTY OF ORANGE

ss:

ROBERT BOYKIN

being sworn says: I am the Plaintiff

Check Applicable Box
☒ Individual Verification
☐ Corporate Verification

in the action herein; I have read the annexed Bill of Particulars

know the contents thereof and the same are true to my knowledge, except those matters therein which are stated to be alleged on information and belief, and as to those matters I believe them to be true.

the of

a corporation, one of the parties to the action; I have read the annexed

know the contents thereof and the same are true to my knowledge, except those matters therein which are stated to be alleged on information and belief, and as to those matters I believe them to be true.

My belief, as to those matters therein not stated upon knowledge, is based upon the following:

Sworn to before me on February 28, 2008, 20

Melissa Hernandez

MELISSA HERNANDEZ
 Notary Public, State of New York
 No. 01HE6051408
 Qualified in Orange County
 Commission Expires November 27, 2010

Robert Boykin

ROBERT BOYKIN (Print signer's name below signature)

STATE OF NEW YORK, COUNTY OF

being sworn says: I am not a party to the action, am over 18 years of

age and reside at

On

, 20 , I served a true copy of the annexed

in the following manner:

☐ Service by Mail

by mailing the same in a sealed envelope, with postage prepaid thereon, in a post-office or official depository of the U.S. Postal Service within the State of New York, addressed to the last-known address of the addressee(s) as indicated below:

☐ Personal Service

by delivering the same personally to the persons at the address indicated below:

☐ Service by Electronic Means

by transmitting the same to the attorney by electronic means to the telephone number or other station or other limitation designated by the attorney for that purpose. In doing so I received a signal from the equipment of the attorney indicating that the transmission was received, and mailed a copy of same to that attorney, in a sealed envelope, with postage prepaid thereon, in a post office or official depository of the U.S. Postal Service within the State of New York, addressed to the last-known address of the addressee(s) as indicated below:

☐ Overnight Delivery Service

by depositing the same with an overnight delivery service in a wrapper properly addressed. Said delivery was made prior to the latest time designated by the overnight delivery service for overnight delivery. The address and delivery service are indicated below:

Sworn to before me on

, 20

Index No.

Year 20

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF ORANGE

ROBERT BOYKIN & ELIZABETH BOYKIN,

Plaintiffs,

-against-

SHAUN OTTEN & INSINGER PERFORMANCE INCORPORATED,

Defendants.

VERIFIED BILL OF PARTICULARS

Attorney for

LAW OFFICES OF
RICHARD ALAN BERNSELY
PlaintiffsONE RAILROAD AVENUE
GOSHEN, NEW YORK 10924

TEL: (845) 294-4788 FAX: (845) 294-4752

Pursuant to 22 NYCRR 130-1.1, the undersigned, an attorney admitted to practice in the courts of New York State, certifies that, upon information and belief and reasonable inquiry, the contentions contained in the annexed ~~February 28, 2008~~ ^{February 28, 2008} are frivolous.

Dated:

Signature.....

Print Signer's Name.....

RICHARD BERNSELY, ESQ.

Service of a copy of the within

is hereby admitted.

Dated:

Attorney(s) for

PLEASE TAKE NOTICE

Check Applicable Box

NOTICE OF
ENTRYthat the within is a (certified) true copy of a
entered in the office of the clerk of the within named Court on

20

NOTICE OF
SETTLEMENT,that an Order of which the within is a true copy will be presented for settlement to the
Hon. one of the judges of the within named Court,
at
on 20 , at M.

Dated:

LAW OFFICES OF
RICHARD ALAN BERNSELY

Attorney for

ONE RAILROAD AVENUE
GOSHEN, NEW YORK 10924

To:

STATE OF NEW YORK)
COUNTY OF NEW YORK) ss:

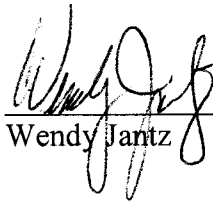
Wendy Jantz, being duly sworn, deposes and says:

That I am not a party to the within action, am over 18 years of age and reside in Staten Island, New York.

That on March 12, 2008, deponent served the within **NOTICE OF REMOVAL**, upon the attorneys and parties listed below by United States prepaid mail by placing same in a mailbox in the State of New York:

TO:

Richard Bernsley, Esq.
One Railroad Avenue
Goshen, New York 10924
(845) 294-4788


Wendy Jantz

Sworn to before me this
12th day of March, 2008



LAUREN RICCIO MELTZER
NOTARY PUBLIC, State of New York
No. 01R15082855
Qualified in King County
Commission Expires July 28,

2009

ROBERT BOYKIN and ELIZABETH BOYKIN,

Plaintiff,

-against-

SHAUN OTTEN & INSINGER PERFORMANCE
INCORPORATED,

Defendants.

NOTICE OF REMOVAL

WHITE FLEISCHNER & FINO, LLP
*Attorneys for DEFENDANTS, SHAUN OTTEN & INSINGER PERFORMANCE
INCORPORATED*
**61 BROADWAY
NEW YORK, N.Y. 10006
(212) 487-9700**

To:
Attorney(s) for

Service of a copy of the within is hereby admitted.
Dated:

.....
Attorney(s) for

PLEASE TAKE NOTICE



that the within is a (certified) true copy of a
entered in the office of the clerk of the within named Court on

NOTICE OF
ENTRY



that an Order of which the within is a true copy will be presented for settlement to the Hon.
one of the judges of the within named Court, at , on , at .

NOTICE OF
SETTLEMENT

Dated:

WHITE FLEISCHNER & FINO, LLP
Attorneys for
**61 BROADWAY
NEW YORK, N.Y. 10006**